May 10, 2013

Douglas Bell
Chair, Trade Policy Staff Committee
Office of the United States Trade Representative
600 17th Street NW
Washington, D.C. 20508

Submitted electronically via www.regulatoins.gov

Re: Transatlantic Trade and Investment Partnership (Docket Number USTR-2013-0019)

Dear Mr. Bell:

The Grocery Manufacturers Association (GMA) appreciates this opportunity to provide comment on the Transatlantic Trade and Investment Partnership (TTIP).

The Grocery Manufacturers Association[1] ("GMA") represents the world's leading food and beverage companies who produce and trade products globally, including in the United States, Mexico and Canada. GMA enthusiastically supports the goal of the Transatlantic Trade and Investment Partnership (TTIP) to strengthen the contribution of trade and investment to fostering jobs, growth and competitiveness on both sides of the Atlantic, and will greatly benefit our member companies.

GMA applauds the bilateral work already undertaken to achieve such an ambitious agreement, namely the United States-European Union High Level Working Group on Jobs and Growth

[1] GMA represents the world's leading food, beverage and consumer products companies. The Association promotes sound public policy, champions initiatives that increase productivity and growth and helps to protect the safety and security of the food supply through scientific excellence. The GMA board of directors is comprised of 48 chief executive officers from the Association's member companies. The U.S. $2.1 trillion food, beverage and consumer packaged goods industry employs 14 million workers, and contributes over $1 trillion in added value to the United States' economy.

(HLWG). GMA and our members agree on the importance of the potential options put forward in the HLWG's final report released in February 2013:

1. Elimination or reduction of conventional barriers to trade in goods, such as tariffs;
2. Elimination, reduction or prevention of barriers to trade in goods; and
3. Enhanced compatibility of regulations and standards.

GMA supports a comprehensive agreement, and the comments provided below represent the interests of GMA member companies in these three areas of trade.

I. Elimination or Reduction of Tariffs

GMA member companies encourage the United States (U.S.) negotiating team to pursue the elimination of tariffs as part of the final, comprehensive TTIP agreement. The elimination or reduction of tariffs is the first crucial step in enabling the U.S. consumer packaged goods (CPG) industry to compete on a level playing field with other products within the European market.

While some sectors already benefit from relatively low tariff barriers in the European Union (EU), GMA members producing processed foods and beverage products are unique in that they still face high and complicated tariffs in the EU. Reduced tariff levels will be a boon for the manufacturers of these products and greatly increase product choices for consumers. This is noted in recent studies conducted on the topic. For example, in their March 2013 report "Reducing Transatlantic Barriers to Trade and Investment: An Economic Assessment," London-based think tank Centre for Economic Policy Research calculated that that EU tariffs for processed foods average 14.6 percent, which is more than four times higher than the 3.3 percent average tariffs for processed foods in the U.S.

Examples of processed food and beverage products that could greatly benefit from eliminated EU tariffs are included in Table 1.

Table 1: Sample of EU Tariffs on U.S. Processed Food and Beverage Products

HS Code		Average MFN Applied Tariff Rate	Description
HS12	200893	22.0	Cranberries "Vaccinium macrocarpon, Vaccinium oxycoccos, Vaccinium vitis-idaea", prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, n.e.s.
HS12	200791	21.6	Citrus fruit jams, jellies, marmalades, purées or pastes, obtained by cooking, whether or not containing added sugar or other sweetening matter
HS12	200799	20.5	Jams, jellies, marmalades, purées or pastes of fruit, obtained by cooking, whether or not containing added sugar or other sweetening matter
HS12	200110	17.6	Cucumbers and gherkins, prepared or preserved by vinegar or acetic acid
HS12	160420	17.2	Prepared or preserved fish (excl. whole or in pieces)
HS12	151710	16.0	Margarine (excl. liquid)
HS12	200410	16.0	Potatoes, prepared or preserved otherwise than by vinegar or acetic acid, frozen
HS12	160100	15.4	Sausages and similar products, of meat, offal or blood; food preparations based on these products
HS12	200210	14.4	Tomatoes, whole or in pieces, prepared or preserved otherwise than by vinegar or acetic acid
HS12	200290	14.4	Tomatoes, prepared or preserved otherwise than by vinegar or acetic acid (excl. whole or in pieces)
HS12	170490	13.4	Sugar confectionery not containing cocoa, incl. white chocolate (excl. chewing gum)
HS12	210410	11.5	Soups and broths and preparations
HS12	210320	10.2	Tomato ketchup and other tomato sauces
HS12	090112	8.3	Decaffeinated coffee (excl. roasted)
HS12	180610	8.0	Cocoa powder, sweetened
HS12	040620	7.7	Grated or powdered cheese
HS12	210330	4.5	Mustard flour and meal, whether or not prepared, and mustard
HS12	230910	3.2	Dog or cat food, put up for retail sale

Source: http://tariffdata.wto.org/TariffList.aspx

Furthermore, the EU's current tariff system is confusing for manufacturers of confectionary and baked goods exporting to Europe. This is due to a special classification system known as the "Meursing table," which calculates tariffs based not only on these products' type, but also on each individual product's content of dairy (milk fat and milk protein), sugar and starch components. For example, according to the USDA, a product containing 6-9% milk fat, 4-15% milk proteins, 5-25% starch/glucose and 30-50% sucrose/invert sugar/isoglucose would refer to code 7307 in the Meursing table.

According to this code, the base tariff would be 86.23 Euro/100 kg net, and additional duties based on content come out to 25.38 Euro/100 kg net. The Meursing table system frequently serves as a trade barrier due to its confusing nature. As a result, some international food manufacturers might avoid the European market, particularly for new products without a confirmed corresponding Meursing table code. GMA and its member companies would like to see this system addressed within the negotiations and be eliminated as part of a broader phase-out of tariffs.

The U.S. household and personal care products industry would ultimately also greatly benefit from eliminated tariffs when competing in the EU market, as shown in Table 2.

Table 2: Sample of EU Tariffs on Household and Personal Care Products

HS Code		Average MFN Applied Tariff Rate	Description
HS12	330710	6.5	Shaving preparations, incl. pre-shave and aftershave products
HS12	330720	6.5	Personal deodorants and antiperspirants
HS12	380894	6.0	Disinfectants
HS12	330620	4.0	Yarn used to clean between the teeth "dental floss", in individual retail packages
HS12	340130	4.0	Organic surface-active products and preparations for washing the skin, in the form of liquid or cream and put up for retail sale, whether or not containing soap
HS12	340220	4.0	Surface-active preparations, washing preparations, auxiliary washing preparations and cleaning preparations put up for retail sale (excl. organic surface-active agents, soap and organic surface-active preparations in the form of bars, cakes, moulded pieces or shapes, and products and preparations for washing the skin in the form of liquid or cream)
HS12	340290	4.0	Surface-active preparations, washing preparations, incl. auxiliary washing preparations and cleaning preparations (excl. those put up for retail sale, organic surface-active agents, soap and organic surface-active preparations in the form of bars, cakes, moulded pieces or shapes, and products and preparations for washing the skin in the form of liquid or cream)
HS12	960321	3.7	Tooth brushes, incl. dental-plate brushes
HS12	960329	3.7	Shaving brushes, hair brushes, nail brushes, eyelash brushes and other brushes for use on the person (excl. tooth brushes)
HS12	960810	3.7	Ball-point pens
HS12	3402	3.7	Organic surface-active agents (other than soap); surface-active preparations, washing preparations (including auxiliary washing preparations) and cleaning preparations, whether or not containing soap, other than those of heading 34.01.
HS12	851631	2.7	Electric hairdryers
HS12	960910	2.7	Pencils and crayons, with leads encased in a rigid sheath
HS12	960920	2.7	Pencil leads, black or colored
HS12	961511	2.7	Combs, hair-slides and the like of hard rubber or plastics
HS12	961610	2.7	Scent sprays and similar toilet sprays, and mounts and heads therefor
HS12	961620	2.7	Powder puffs and pads for the application of cosmetics or toilet preparations
HS12	850680	2.4	Primary cells and primary batteries, electric (excl. spent, and those of silver oxide, mercuric oxide, manganese dioxide, lithium and air-zinc)
HS12	851010	2.2	Shavers, electric
HS12	3401	1.0	Soap; organic surface-active products and preparations for use as soap, in the form of bars, cakes, moulded pieces or shapes, whether or not containing soap; organic surface-active products and preparations for washing the skin, in the form of liquid or cream and put up for retail sale, whether or not containing soap; paper, wadding, felt and nonwovens, impregnated, coated or covered with soap or detergent.

Source: http://tariffdata.wto.org/TariffList.aspx

Please see Appendix A for a broader list of CPG products that will greatly benefit from eliminated or reduced tariff rates in the EU.

II. Elimination, Reduction or Prevention of Barriers to Trade in Goods

GMA encourages the US Government to achieve the template of the Trans-Pacific Partnership (TPP), known as "an ambitious, 21st century TPP agreement", in the TTIP. Achieving the template of the TPP would help achieve an elimination, reduction, and prevention of many barriers to trade that the CPG industry faces.

GMA and others have worked closely with U.S. and other negotiators in the TPP, and we are excited about the potential to create a 21st century agreement that results in comprehensive liberalization, enhances intellectual property rights, builds regulatory coherence and cooperation and boosts transparency and science in food safety measures. We applaud the vision and dedication of the interagency team in their efforts to meet those goals. Thus, we look to the TPP as the template upon which to negotiate all future agreements.

If the U.S. settled for anything less in an attempt to reach bilateral agreement with the EU, it would seriously undermine the ability to achieve important commitments within the TPP and would send a very strong and disturbing message to these very important Asia Pacific Economic Cooperation (APEC) Forum allies.

The following are specific issues that should be addressed in the TTIP to eliminate, reduce, and prevent many of the barriers to trade:

- *SPS:* One of our principal goals for the TPP negotiations is an enforceable "WTO-Plus" SPS chapter – that is, an agreement that strengthens and reinforces the rules and disciplines of the World Trade Organization's *Agreement on the Application of Sanitary and Phytosanitary Measures* (SPS Agreement) and underscores the importance of science-based regulation. In pursuing this goal we are responding to common complaints of producers, processors and exporters regarding SPS measures. They are encountering:

    - unnecessarily trade-restrictive measures that are not science-based;
    - new measures that are developed without opportunities for interested parties to comment;
    - new measures that are implemented without adequate time for compliance;
    - measures that do not conform to international standards;
    - a reluctance to implement trade-facilitating policies such as harmonized certificates and the recognition of systems-based production methods; and
    - the use of questionable testing methods to enforce standards.

    To address these issues, which GMA members encounter in the EU, any US-EU agreement on SPS should include the same "WTO plus" terms that are in the TPP text. This chapter should also provide for formal "fast-track" procedures that expeditiously address issues related to shipments of perishable goods and allow the automatic right for backup testing in the event of an adverse test result.

- *Geographical Indicators:* GMA supports the protection of proper geographical indications (GIs) – i.e., names associated with specialized foods from regions throughout the world, but GMA opposes any attempt to use GI protection to monopolize the use of

common names that are now a part of the public domain. We believe the TPP negotiations will yield commitments that provide an opportunity for parties to promote a proper approach to protecting legitimate GIs, one which preserves the ability of producers and exporters to use common names.

GMA strongly opposes any inclusion of GIs in a broader US/EU trade discussion as well as any type of linkage of this issue to those discussions, whether that takes the form of an FTA or an endeavor limited to a handful of sectors or some other cross-cutting undertaking.

For instance, the wine industry has been successful in entering a bilateral EU/US Agreement on Trade in Wine that entered into force in 2006. That agreement provides the platform for and has been beneficial in continuing efforts to harmonize regulatory practices. The functioning of this bilateral agreement provides the forum for resolution of any wine issues that arise and should not be compromised or otherwise become linked to other sectors' regulatory issues. Accordingly, negotiations on GIs, like cheese and wine names, should not be part larger multidiscipline agreement between the US and the EU.

- *Composite Health Certificates:* The U.S. and EU should streamline the certification and attestation requirements for food exports to enter the country. Certificate and attestation requirements should be risk based. Specifically, the EU's requires composite health certificates, which act as a significant barrier to trade.

  The EU began requiring composite health certificates in January 2012 through Commission Regulation (EU) No 28/2012. The EU defines a composite product as containing both animal and plant origin ingredients. Fundamentally, we see no need for these certificates, and they act as a barrier to triangular trade.

  An additional challenge is determining which products fall under the scope of each certificate. As stated above, the EU defines a composite product as containing both animal and plant origin ingredients. However, the products for which the composite certificate should be used do not necessarily follow this definition. Instead, the EU has established a number of Harmonized System (HS) codes for which it expects the composite certificate to be used. This approach leads to numerous inconsistencies which are detailed in the annex along with additional information on this issue.

III. Enhanced Compatibility of Regulations and Standards

The technical nature of food, beverage and consumer packaged goods manufacturing creates ample opportunity for forge compatibility of regulations and standards benefitting manufacturers and consumers on both sides of the Atlantic. Below we have outlined some key potential areas suggested by GMA members:

- *Nanotechnology:* Currently, the European Food Safety Authority (EFSA) is planning to prepare a background document on the current knowledge in the field of nanotechnology and prepare an inventory of food additives/food contact materials/feed additives

applications of nanotechnologies currently used and/or reasonably foreseen to be used. This would be an ideal time for EFSA to communicate with the US Food and Drug Administration (FDA) on the science available on the subject matter.

- *Flavorings:* Consumers worldwide are continually demanding new and improved flavors in their foods and beverages. Consumers also have a complete expectation that these flavors are safe as well as available across jurisdictional boundaries.

  To that end, producers of foods and beverages urge the parties to provide for recognition of the relevant, thorough, and similar scientific protocols by which the safety of flavors is reviewed, which ensure the safety of flavoring materials and related products, as well as a further acknowledgement that disclosure of product formulation for such products as a condition of market access is not required. Specifically, the TTIP should provide for the following:

  > To improve alignment of flavoring regulations and regulatory activities with the objective of promoting and protecting public health while not creating unnecessary obstacles to trade, the Parties shall accept the predominant international flavor-safety protocols as evidence of the safety of Flavoring Materials, as follows -

  1. Flavoring materials shall be considered acceptable for use if they qualify under one or more of the following criteria, indicating that the material is appropriate for use in the formulation of flavorings:
     a. Listed in the International Organization of the Flavor Industry (IOFI) Global Reference List of Flavorings (GRL);
     b. Accepted by the Joint Food & Agriculture Organization (FAO)/World Health Organization (WHO) Expert Committee on Food Additives (JECFA) as posing no safety concerns at current levels of intake;
     c. Evaluated and found, using the same or similar methodology as used by JECFA, to present "no safety concern under conditions of intended use" by authoritative bodies such as the European Food Safety Authority (EFSA) or the Japanese Food Safety Commission (FSC); and/or
     d. Deemed to be Generally Recognized As Safe (GRAS), approved by the US Food and Drug Administration (FDA) including GRAS determination published by the Expert Panel of the Flavor and Extract Manufacturers Association of the United States (FEMA).
  2. All Flavoring Materials, including those obtained by chemical synthesis or isolated using chemical processes, and those denominated as natural Flavoring Materials (both individual substances and natural-complex materials), evaluated and listed as permitted by one or more of the foregoing internationally recognized bodies shall be deemed acceptable for use.
  3. Under this provision, Flavoring Materials are "products that are added to food to impart or modify the flavor of food. Flavorings do not include substances that have an exclusively sweet, sour, or salty taste (e.g. sugar, vinegar, and table salt). Flavorings

may contain non-flavoring food ingredients. They are not intended to be consumed as such. Flavorings may contain permitted food additives and/or other food ingredients incorporated for technological purposes."

Resultant benefits of such a convergence of flavor regulations would include –

- Transparency (Companies would know which flavors are acceptable across these markets.)
- Transportability of Goods (reduction of the barriers to trade caused by even slight misalignment in flavor-safety approaches)
- Greater Choice for Consumers
- Cost Savings for Governments (able to re-focus scarce resources in areas with greater concerns)
- Elimination of need for regulators to ask for compositional information
- Resultant Protection of Trade Secrets

- *Risk Assessment Communication:* One way to improve regulatory compatibility would be regular dialogue between the US and EU's risk assessment authorities. Many regulations and market trends are driven by risk assessments, and the European or American scientific authority on an issue frequently has varying views on those assessments. The US and EU should consider consulting with one another before a risk assessment is released because the risk assessment body may not always completely understand the ramifications of its risk assessment to the global marketplace.

  For example, EFSA looked to a 2007 study from the University of Southhampton to determine that 6 colorings used in food cause hypertension in children. Now, food products with these colorings must bear warning labels in the EU even though the study used to justify this regulation has its criticisms. EFSA's willingness to look at other expert research could have changed the regulatory landscape for these products in the US.

  In that regard, GMA supports a robust regulatory process including risk assessment to ensure the safety of new products and we have actively participated in the development on the International Standards developed by Codex Alimentarius.

- *Consumer Pesticides (Biocides):* This sector is one in which both the U.S. and E.U. necessarily employ regulatory regimes requiring prior governmental approval for marketing the products in question. While there are differences in the approval criteria utilized by the two countries, we believe that the greatest opportunity to reduce costs and promote trade (in both directions) lies in harmonizing and improving approval procedures.

  To sell non-agricultural pesticides, including antimicrobials and other biocides, in the US and EU, government authorities require submission by the company seeking to market the product of substantial amounts of data to ensure the pesticides meet national safety standards to protect human health and the environment. Currently, manufacturers of non-agricultural pesticides (biocides) must separately submit information to US and EU authorities, as well as EU member states. There is a real potential for efficiencies and minimization of unnecessary burdens for both government and industry through harmonization of dossier format, data requirements and data reviews between US and EU

authorities. Specific approaches to accomplish these efficiencies that can easily be included in the US/EU Agreement include:

1. Sharing reviews of acute toxicity studies. The review of an acute toxicity study assures the laboratory followed an accepted method and was conducted in a way that ensures the result is accurate and reliable. The US and EU should not need to duplicate reviews of acute toxicology studies. This is not a proposal for mutual recognition of risk assessments, but rather would create the possibility of relying on each other's reviews of the scientific studies supporting risk assessments.
2. Prohibit subsidiary political units from imposing approval requirements or restrictions. Approval by the EU or US federal authorities should be adequate to ensure safety across the entire U.S. or the European Union. Subsidiary political units, such as EU Member States or US States should be prohibited from seeking to impose separate requirements for approval or local restrictions on sale or use.

3. Acceptance of non-animal testing. EU authorities place a high value on avoiding testing pesticides on vertebrate animals. US EPA FIFRA often requires new and additional vertebrate animal tests, and does not accept many non-animal test methods approved by ECV AM (http://ihcp.jrc.ec.europa.eu/our_activities/alt-animal-testing). The need for valid alternatives to animal testing is vitally important. The US should recognize the EU work and adopt the same or similar measures allowing acceptance of non-animal testing.

4. Harmonization of hazard communication scheme to GHS standard. The EU has adopted GHS as the standard for hazard classification and communication for all products, including pesticides. US EPA has not yet adopted GHS for pesticides. US regulators should speed adoption of GHS. The absence of US acceptance of GHS for non-agricultural pesticides creates real potential for confusion and real burdens on commerce. Harmonization can easily achieve efficiencies.

5. Creation of an OECD dossier template for non-agricultural pesticides (biocides). Currently, manufacturers of agricultural pesticides and microbial pesticides may submit information to several countries using an OECD dossier template. However, there is no dossier template for other pesticides, *i.e.*, non-agricultural or non-crop pesticides. This lack of a dossier template for non-agricultural pesticides (both active substances and formulated products) creates an opportunity to promote greater transatlantic regulatory compatibility. A common transatlantic dossier would be beneficial, although an OECD dossier offers a greater if not global impact for much the same effort in the following ways:

- Facilitates work sharing (cost effective for government, offers speed for industry)
- Enables review sharing (cost effective for government, offers speed for industry)
- Creates the possibility of a harmonized electronic dossier (cost effective for government and industry)

Conclusion

GMA recognizes the importance of this trade agreement negotiation. GMA underscores the importance of continuing bilateral dialogue with the EU in an attempt to eliminate trade barriers, build regulatory coherence and create jobs and growth. GMA supports a comprehensive agreement. GMA could not support an EU agreement that would either carve out food and agriculture or would undermine efforts to reinforce science based regulatory commitments.

GMA looks forward to working with the USTR and the interagency trade policy staff to achieve meaningful results for the CPG industry.

Sincerely,

Carmen Stacy
Director, Global Issues and Multilateral Affairs